

*In the Matter of Factfinding:*

CASE NO. LA-IM-184-M

*-between-*

CITY OF EL CAJON

EMPLOYER

*-and-*

EL CAJON MUNICIPAL EMPLOYEE'S  
ASSOCIATION

UNION

FINDINGS

CONCLUSIONS

RECOMMENDATIONS

DAVID B. HART  
CHAIRMAN

HEARING HELD

September 30, 2015

El Cajon, California

REPRESENTING:

CITY OF EL CAJON

Frances E. Rogers, Esq.  
Cassidy Liebert Whitmore

REPRESENTING:

MUNICIPAL EMPLOYEE'S ASSOCIATION

Jeffrey W. Natke, Esq.  
City Employees Associates

1  
2 **JURISDICTION**

3 This Fact Finding arises pursuant to Government Code Section 3505  
4 concerning Impasse Procedures as administered by the Public Employment Relations  
5 Board (hereinafter may be referred to as "PERB") between the City of El Cajon  
6 (hereinafter may be referred to as the "City") and the El Cajon Municipal Employee's  
7 Association (ECMEA), (hereinafter may be referred to as the "Union").

8 Unable to reach a settlement, David B. Hart was selected to act as an impartial  
9 Chairman and empowered him to render an advisory recommendation in accordance  
10 with the PERB'S rules concerning Fact Finding. The Panel executive session and the  
11 Hearing was held within the stipulated time lines.

12 The Factfining panel, in addition to the Chairman, included Steve Berliner Esq.,  
13 appointed by the City, and Vicky Barker, appointed by ECMEA.

14 The Hearing was held on the date set forth above and the parties had ample  
15 time to present evidence including documents and witnesses.

16 **ISSUE**

17 **'WHAT TERMS SHALL BE INCLUDED IN THE**  
18 **SUCCESSOR AGREEMENT BETWEEN THE CITY**  
19 **OF EL CAJON AND MEA.**

20  
21 **PERB Criteria:**

22 **AB 646 (now contained the PERB Regulations) lays out a set of 8 criteria to be**  
23 **used by a fact finding panel:**

24 **"(d) In arriving at their findings and recommendations, the**  
25 **fact finders shall consider, weigh, and be guided by all the following**

26 **Criteria:**

27 **(1) State and Federal laws that are applicable to the employer.**

28 **(2) Local rules, regulations, or ordinances.**

1 (3) Stipulations of the parties.

2 (4) The interests and welfare of the public and the financial  
3 ability of the public agency.

4 (5) Comparison of the wages, hours, and conditions of employment  
5 of the employees involved in the factfinding proceeding with the  
6 wages, hours, and conditions of employment of other employees  
7 performing similar services in comparable public agencies.

8 (6) The consumer price index for goods and services, commonly  
9 known as the cost of living.

10 (7) The overall compensation presently received by the employees,  
11 including direct wage compensation, vacations, holidays, and other  
12 excused time, insurance and pensions, medical and hospitalization  
13 benefits, the continuity and stability of employment, and all other  
14 benefits received

15 (8) Any other facts, not confined to those specified in paragraphs  
16 (1) to (7), inclusive, which are normally or traditionally taken  
17 into consideration in making the findings and recommendations. "

## 18 19 BACKGROUND

20  
21 The City of El Cajon, a public agency within the meaning of the Meyers-  
22 Miliias-Brown Act ("MMBA"), and the El Cajon Municipal Employees  
23 Association ("MEA"), a recognized employee organization within the meaning of  
24 the MMBA, reached impasse on July 2, 2015. Following unsuccessful mediation  
25 on July 30, 2015, MEA requested fact finding. No objection was made to the fact  
26 finding panel's jurisdiction to hear and provide a recommendation in this matter.

27 The City has a population of approximately 103,019 people. The median  
28 household income in the City is \$44,112 annually. The City has the highest

1 poverty rate among all other cities in San Diego County according federal poverty  
2 lines.

### 3 EMPLOYER POSITION

4 The City presented a budgetary and financial projection for fiscal years 2015  
5 through 2020. The following were the salient points:

6 The estimated revenues and source of funds are projected to increase for  
7 2015 by approximately \$1.7 million dollars while expenditures and other costs are  
8 projected to increase by \$5.3 million. The total impact to fund balance is a  
9 decrease in \$1.4 million dollars.

10 While the City's change in fund balance for fiscal year 2014/2015 will likely  
11 be a growth of \$992,047, this is largely due to one-time revenues, such as the sale  
12 of the former police station on Fletcher Parkway.

13 For fiscal years 2016, 2017, 2018, and 2019, expenditures are projected to  
14 exceed revenues resulting in a loss in fund balance over the four years.

15  
16 The largest driving factor in the City's expenditures is the increased  
17 contributions to CalPERS. The City's current contribution rate for non-safety  
18 members is 33.76% and is projected to increase to 42.1% by 2020, but this does  
19 not take into consideration future salary and benefit increases which will drive  
20 these contribution rates higher. The City's current overall contribution for safety  
21 and non-safety members is \$12.4 million dollars and this is expected to increase to  
22 \$15.4 million dollars by 2021 which does not take into account the impact of  
23 future salary and benefit increases. The City maintains an unfunded liability owed  
24 to CalPERS of \$137,565,731.00.

25  
26 MEA argues that the projected contribution rates could be lower depending on the  
27 return in CalPERS' market investments. No evidence was provided to support this  
28 speculative assertion. However, the City's budget reflects what it knows – the

1 projections given to it by CalPERS. Theoretical guesses on changes in actuarial  
2 improvements and losses cannot be a basis to make additional expenditures to  
3 salary and benefits. Further, the City's current expenditure of \$12.4 million for  
4 fiscal year 2015/2016 is a real and actualized cost paid from the City's funds.  
5

#### 6 **Argument in Support of City's Position**

7  
8       Salary. The City's offer of a 2.5% salary increase for fiscal year 2015/2016,  
9 with no retroactivity, and a 1.5% increase for fiscal year 2016/2017 is a fair and  
10 reasonable salary increase. MEA's proposal of a 4% salary increase effective July  
11 1, 2015 and another 4% increase effective July 1, 2016 is unreasonable in light of  
12 the evidence. As supported by evidence at the hearing, the City's proposal is at or  
13 slightly better than the median across-the-board salary increases given by  
14 comparable cities in San Diego county, as well as the county itself.  
15

16       Although many of the classifications in the market salary survey were  
17 below median, since 2013 nearly every surveyed classification grew closer to the  
18 median each year. The City's current proposal will continue to move the  
19 classifications higher in the marketplace.  
20

21       The City's proposal is also reasonable based on the budget projections.  
22 Expenditures are projected to exceed revenues for the fiscal year ending June 30,  
23 2016 and for each of the three following fiscal years. MEA's proposal is imprudent  
24 under the City's current financial projections.  
25

26       Cash Stipends. MEA proposes a cash stipend of \$750 per employee upon  
27 adoption of the MOU and another cash stipend of \$500 on July 1, 2016. The City  
28 opposes the stipends entirely. The evidence supports the City's position.

1 MEA's proposal is unreasonable because the City's current salary proposal  
2 is the best financial offer in light of the City's budget constraints and growing  
3 CalPERS contributions. An additional stipend amounting to \$144,000 in 2015 and  
4 \$96,000 in 2016, would be an excessive cost and unreasonable under the City's  
5 current budget picture. Further, no other employee groups, including unrepresented,  
6 will receive a stipend.

7  
8 Special Salary Adjustments. MEA requests an additional 2.5% salary  
9 adjustment for the Public Safety Communication Operators, Police Dispatchers,  
10 Police Services Officers, and the Police Records Specialist. This is a total of 41  
11 (25.3%) of the 162 positions in the bargaining group. The evidence does not  
12 support MEA's proposal for the following reasons:

13  
14 It should be noted that each of the classifications for which MEA requests a  
15 special adjustment is assigned to the Police Department and are each seated at  
16 MEA's negotiation table. MEA provided absolutely no justification for selective  
17 special adjustments for these classifications, particularly where the market survey  
18 provided by the City reflected multiple MEA classifications that are below the  
19 median in the San Diego market. It is unfair to award salary adjustments to  
20 classifications that sit at the negotiation table to the detriment of classifications that  
21 do not. Further, the City made abundantly clear from the outset of negotiations that  
22 the salary proposals were not based on the market, but on what is reasonable given  
23 the City's current budget forecast.

24  
25 In addition, the evidence established that the City's Police Services Officers  
26 are paid at 19.25% above the median in the San Diego market and, in fact, are one  
27 of the highest paid Police Services Officers in the county.  
28

1 Cafeteria Plan Contributions. The City proposes to provide a \$50 increase to  
2 each employee's cafeteria plan effective January 1, 2017. MEA requests a \$50  
3 increase effective January 1, 2016. The evidence established that the City's  
4 proposal is the more appropriate benefit for the following reasons:

5  
6 Each MEA employee currently receives a cafeteria plan contribution of  
7 \$1,000 per month. All or any part of the \$1,000 contribution per month may be  
8 cashed out by the employee. Thus, an employee who does not select any health  
9 benefits essentially receives an additional \$12,000 per year.

10  
11 No other employee groups in the City currently receive a \$1,000 per month  
12 cafeteria plan contribution. Rather, all other employees receive \$950 per month.  
13 The City intends, or has proposed, that all other employees be brought up to a  
14 contribution of \$1,000 per month effective January 1, 2016. Therefore, by delaying  
15 the \$50 increase to MEA employees until January 1, 2017, all City employees will  
16 enjoy the same contribution to their cafeteria plans effective January 1, 2016.

17  
18 In addition, the evidence presented shows that 59% of MEA members opt  
19 out of the City's health insurance and therefore, the contribution is essentially an  
20 additional \$12,000 in cash. For the majority of those who are enrolled in one of the  
21 City's health insurance plans, the *current* contribution fully pays the cost of the  
22 health insurance premium.

23  
24 Uniform Allowance. MEA proposes to increase the uniform allowance for  
25 Police Services Officers and Animal Control Officers from \$400 to \$500 annually.  
26 The City opposes the increase.

27  
28 MEA bears the burden of proof and MEA presented no evidence at fact

1 finding as to why the increase is necessary or justified. The City requested  
2 documentation as to the reason for the request, but did not receive any.

3

4 Tool Allowance. MEA proposes to increase the tool allowance for the City's  
5 Equipment Mechanics from \$200.00 to \$250.00 per employee, per year.

6

7 MEA bears the burden of proof and MEA presented no evidence at fact  
8 finding as to why the increase is necessary or justified. The City requested  
9 documentation to support the request, but did not receive any.

10

11 The City provides tools to Equipment Mechanics. The tool allowance is  
12 used by the employees to purchase tools which they retain as their own property.

13

14 Sick Leave Conversion. Currently, employees may convert up to 40 hours of  
15 unused sick leave to vacation leave each year. MEA proposes to increase this to 60  
16 hours. The evidence does not support MEA's proposal for the following reasons:

17

18 As employees have the ability to cash out vacation leave *during*  
19 employment, the cost for the conversion is real and projected at \$22,981 per year,  
20 without regard to future salary increases.

21

22 Employees already have the ability to use unused sick leave for other  
23 reasons, specifically, converting the unused hours to CalPERS service credit or to a  
24 cash account to pay for retiree health insurance.

25

26 The City Council's Fiscal Responsibility Plan Resolution calls for  
27 stabilizing and containing the costs of employee benefits, including leave accruals.  
28 MEA's proposal is contrary to the City's policies.



1 Increase in the Cap on Compensatory Time Off. Currently, employees may  
2 accumulate no more than 48 hours of compensatory time off, in lieu of overtime  
3 pay. MEA proposes to increase this cap to 60 hours. The evidence does not justify  
4 MEA's proposal for the following reasons:

5 Providing employees with additional leave time makes it more difficult for  
6 the City to keep a department fully staffed. Moreover, the City runs the risk of  
7 spending more on overtime compensation to back-fill for employees out on  
8 compensatory time off.

9  
10 The City Council's Fiscal Responsibility Plan Resolution calls for  
11 stabilizing and containing the costs of employee benefits, including leave accruals.  
12 MEA's proposal is contrary to the City's policies.

13  
14 The City's budget picture reflects that expenditures will exceed revenues for  
15 the next four years driven in large part by steeply increasing retirement  
16 contributions to CalPERS. Therefore, the City's financial proposals are fair,  
17 reasonable, consistent with general salary increases among the San Diego County  
18 market, and consistent with salary increases for unrepresented employees. The  
19 City's proposals are further fair and just in light of the fact that the City did not  
20 request or receive any concessions from MEA in these negotiations.

21  
22 The City presented evidence that current fiscal year expenses are projected to  
23 go up by 8.72% over last fiscal year, while revenues are only projected to go up  
24 2.69%. Even if the City were to assume no salary increases over the next 5 fiscal  
25 years, the City's general fund balance would decrease by millions of dollars over  
26 that time. ECMEA all but ignored the data presented by the City on the increasing  
27  
28

1 CalPERS miscellaneous rates (33.76% this fiscal year, going up to 42.1% by FY  
2 20-21). Pension reform has not resulted in a reduction of employer rates.  
3

4       Nonetheless, despite having a population that endures the second lowest  
5 median household income in San Diego County and the highest poverty rate in the  
6 County, the City has provided salary increases to MEA employees outpacing CPI  
7 since 2012 and increases to the cafeteria plan of approximately 37.5% over that  
8 period (while avoiding layoffs and salary cuts or furloughs during the recession).  
9  
10

11       Moreover, the value of the salary increases the City proposed over 2 years was in  
12 line with what neighboring agencies were offering and the first year increase of  
13 2.5% was above the first year increases being given by many other agencies. It is  
14 also important to mention that the City's contribution to the cafeteria plan can be  
15 cashed out 100%, which for many ECMEA employees equals a \$12,000 per year  
16 increase in income.  
17  
18  
19

20       The City recognizes that some of ECMEA's classifications are below the  
21 median of the comparable agencies. However, what is more important is the  
22 progress the City has made since 2013 to reduce that difference and how the City's  
23 2 year proposal would make further progress.  
24  
25  
26  
27  
28

1  
2 **UNION POSITION**

3 (1) Our positions are underpaid relative to market (City did not disagree).  
4

5 1(2) The Fire is getting 6.25% raise while we're getting only 4% raise over  
6 the same proposed 2 year MOU TERM.

7 (3) The MEA has saved the City \$400,000 in ongoing annual savings, by  
8 agreeing to subcontract out janitorial services – which were MEA bargaining unit  
9 positions.  
10

11 (4) The City's statements in public sessions, per the press article and un-  
12 contradicted by the City's team, persuasively demonstrates that the City has the  
13 financial capacity to offer higher raises.

14 (5) The Association wants and the parties are better off in a two year  
15 agreement with FAIR pay increases.  
16

17 The El Cajon MEA proposes the following settlement.

18 (1) 5% salary increase front loaded in the first year of a two year contract or  
19 a 6% raise distributed evenly each year (3% and 3%)  
20

21 (2) Cash Stipend of \$500 upon adoption of the MOU

22 (3) Increase sick leave conversion by 20 hours (from 40 hours to 60 hours)  
23

24 (4) Increase comp time cap by 12 hours (from 48 hours to 60 hours)

25 (5) Drop the request to move the medical increase into the first year (keep  
26 in second year as City proposes)

27 (6) Drop the individual pay adjustments  
28

- 1 (7) Drop the proposed uniform and tool allowance increases  
2  
3 (8) Inclusion of previously agreed to tentative agreements  
4  
5 (9) Association would endorse this before the full membership and we  
6 believe it will be ratified

7 ANALYSIS

8 It is generally believed that the best labor-management contracts are  
9 those that are negotiated through bargaining without outside assistance. There are  
10 instances however, where the parties find it difficult or impossible to reach  
11 agreement by direct negotiation. In such situations the fact-finding process can  
12 often provide a mechanism for resolution. It is certainly not the panel's intention  
13 to prolong the dispute or erect obstacles that impede resolution. It is also not our  
14 intent to "split the baby" so to speak.  
15  
16

17 The Chairman is cognizant of the fact that the current dispute has  
18 roots in the economic conditions of the times and the local political climate . The  
19 nature of the issues and the current state of relations of the parties are of obvious  
20 significance.  
21  
22

23 While it is generally prudent to try and achieve a long-term  
24 settlement, the Chairman notes that both parties to these proceedings have  
25 indicated their desire for a long term agreement. Accordingly, the  
26 recommendations set forth herein will not contain any re-openers and it is hoped  
27  
28

1 the parties will use these recommendations to bring this dispute to an end.

2  
3 The presentation by both parties, were concise and to the point. Panel  
4 members questions to the parties during the course of the hearing gave the panel a  
5 general historical context in which to assess the differences which now  
6 predominate the situation confronting the parties.  
7

8 After careful consideration and examination of the presentations and  
9 documents, the Chairman presents the following recommendations in the hope the  
10 parties can use these recommendations to reach an agreement. Unilateral  
11 implementation of terms and conditions by the Employer would tend to disrupt  
12 good labor relations. Good labor relations are a desired goal.  
13  
14

15 The panel members have had an opportunity to concur or dissent on  
16 the issues as put forth by the Chairman, and attached to these recommendations  
17 are those notations.  
18

### 19 RECOMMENDATIONS

20 The chairman after analyzing the record as a whole has concluded the  
21 Bargaining Unit members deserve a wage increase. The other issues that are still  
22 open, are singular issues for the most part and do not effect the Bargaining Unit as  
23 a whole. IE: uniform allowance et al.  
24  
25

26 The chairman then, recommends that the parties adopt and ratify the  
27 City's Comprehensive Last Best and Final Offer dated and presented June 26,  
28

1 2015, with the following amendment:  
2

3 Bargaining Unit members who are still employed by the City on  
4 November 15, 2015, shall receive a one-time off the schedule signing bonus of  
5 Seven Hundred Fifty (\$750.00).  
6  
7  
8  
9  
10  
11  
12

13 Respectfully submitted;  
14

15 

16 David B. Hart  
17 Chairman  
18  
19  
20  
21  
22  
23  
24  
25  
26

27 Signed and dated this 30<sup>th</sup> day of October, 2015.  
28

1  
2 EL CAJON MUNICIPAL EMPLOYEE'S ASSOCIATION

3  
4 PANEL MEMBER VICKY BARKER

5 AS TO CHAIRMAN'S RECOMMENDATIONS

6  
7 (See attached)

8  
9  
10  
11  
12  
13 CONCUR *V in port*

DISSENT *V in port*

14  
15  
16  
17   
18 VICKY BARKER

19  
20 Panel Member

21  
22  
23  
24  
25 Signed and dated this 27<sup>th</sup> day of October, 2015

**City of El Cajon and El Cajon Municipal Employees Association  
Case No. LA-IM-184-M**

**Opinion of Panel Member Vicky Barker  
Concurring in Part and Dissenting in Part**

I concur with Chairman Hart's recommendation that El Cajon Municipal Employees Association (MEA) bargaining unit members employed on November 15, 2015 receive a one-time signing bonus of \$750.00.

I dissent from Chairman Hart's recommendation that the parties accept the City's June 26, 2015 Comprehensive Last Best and Final Offer (LBFO). The City has the fiscal ability to readily pay more than they are offering the MEA and, although the signing bonus is a good substitute for retroactive pay, it is insufficient to replace the reasonable wage increases sought by the MEA. The City has publicly touted its positive budget outlook and will save \$400,000 every year due to the MEA's agreement to permit the City to subcontract out MEA janitorial jobs. Moreover, the City has already granted the Fire Department employees a front-loaded 6.25% raise. The City has also offered to increase the Management Association's sick leave conversion by 20 hours and the MEA's proposal to increase comp. time by 20 hours could actually save the City money while offering employees greater flexibility.

I recommend that the parties accept a fair compromise as follows:

1. A two-year contract with either:
  - (a) A 3% wage increase in both Year 1 and Year 2, or
  - (b) A frontloaded 5% wage increase in Year 1;
2. A \$750 signing bonus;
3. An increase in the sick leave conversion by 20 hours;
4. An increase in the comp. time cap by 12 hours; and
5. Accept the City's LBFO in all other respects.



1 CITY OF EL CAJON

2 PANEL MEMBER STEVE BERLINER

3 AS TO CHAIRMAN'S RECOMMENDATIONS

4  
5  
6 CONCUR *in part*

DISSENT *in part*

7  
8  
9  
10 (See attached)

11  
12  
13  
14  
15 *Steven M. Berliner*  
16 STEVE BERLINER

17  
18 Panel Member

19  
20  
21  
22  
23 Signed and dated this *29<sup>th</sup>* day of October, 2015

Steven M. Berliner, Bar No. 142835  
sberliner@lcwlegal.com  
LIEBERT CASSIDY WHITMORE  
A Professional Law Corporation  
6033 West Century Boulevard, 5th Floor  
Los Angeles, California 90045  
Telephone: 310.981.2000  
Facsimile: 310.337.0837

### FACTFINDING HEARING

In the Matter of Factfinding Between

CITY OF EL CAJON,

Employer,

and

EL CAJON MUNICIPAL EMPLOYEES'  
ASSOCIATION,

Union.

OAH Case No.: Case No. LA-IM-184-M

**PANEL MEMBER STEVEN M. BERLINER'S  
CONCURRENCE WITH FINDINGS AND  
DISSENT TO CONCLUSIONS AND  
RECOMMENDATIONS OF CHAIRMAN  
DAVID B. HART**

### CONCURRENCE WITH FINDINGS

I am in agreement with and concur in the findings made by Chairman David B. Hart. However, as I explain below, I dissent to the extent that Chairman Hart recommends that the City of El Cajon ("City") provide a one-time signing bonus of \$750 per unit member in addition to the City's last, best and final proposal.

Chairman Hart makes appropriate and well-reasoned findings that the evidence presented at the hearing supports every component of the City's last, best and final proposal and that it does not support any component of the last, best and final proposal made by the El Cajon Municipal Employees' Association ("ECMEA"). While the City presented significant evidence of the City's financial condition and other factors in support of its positions, the ECMEA presented almost

4607850.1 EL020-016

PANEL MEMBER STEVEN M. BERLINER'S CONCURRENCE WITH FINDINGS AND DISSENT TO  
CONCLUSIONS AND RECOMMENDATIONS OF CHAIRMAN DAVID B. HART

1 nothing to support its position. The one document it did introduce, a newspaper article,  
2 purportedly to suggest the City could afford to provide the increases in compensation they  
3 demand, was quickly refuted by the City. That article focused on revenues. It ignored the City's  
4 escalating costs. The City's evidence showed that expenses were growing at a much higher pace  
5 than its revenues and will do so for the foreseeable future. Moreover, much of the touted  
6 increased revenues were in fact one-time influxes of funds, which will not be repeated.

7 **DISSENT TO CONCLUSION AND RECOMMENDATION**

8 While I concur with Chairman Hart's analysis of the evidence presented, I dissent to his  
9 conclusion/recommendation to the extent it provides any enhancements in excess of the City's  
10 last, best and final proposal. Despite the evidence, he recommends that the City provide each  
11 ECMEA member employed by the City on November 15, 2015 a one-time signing bonus of \$750  
12 in addition to all the enhancements already offered in its last, best and final two year proposal.

13 Chairman Hart's support for the City's last, best and final proposal is warranted on the  
14 evidence. However, the conclusion/recommendation for a signing bonus is unjustified given the  
15 findings. The evidence showed that there are 182 full-time ECMEA unit members. A \$750  
16 signing bonus would cost \$136,500 more than the City had previously proposed. Given the  
17 undisputed evidence presented of the City's financial condition, I do not agree that the City can or  
18 should pay an additional \$136,500. For that reason, I dissent to that part of the  
19 conclusion/recommendation.

20  
21 Dated: October 29, 2015

LIEBERT CASSIDY WHITMORE

22  
23 By:



24 Steven M. Berliner  
25 Panel Member for the City of El Cajon  
26  
27  
28